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Attorney for Plaintiff

AUGUST IMAGE, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AUGUST IMAGE, LLC,

Plaintiff,

v.

VIE DE MER SKINCARE, INC,

Defendant.

Civil Action No. 2:23-cv-8286

**COMPLAINT**

Plaintiff August Image, LLC (“Plaintiff”) sues defendant Vie de Mer Skincare, Inc (“Defendant”), and alleges as follows:

**THE PARTIES**

1. Plaintiff is a limited liability company organized and existing under

1 the laws of the State of New York with its principal place of business located in  
2 New York, NY.

3 2. Defendant is a corporation organized and existing under the laws of  
4 the State of California with its principal place of business located at 220 Eucalyptus  
5 Drive, El Segundo, CA 90245. Defendant's agent for service of process is Niloufar  
6 Dadashi, 220 Eucalyptus Drive, El Segundo, CA 90245.  
7

8 **JURISDICTION AND VENUE**

9 3. This Court has subject matter jurisdiction over this action pursuant to  
10 28 U.S.C. §§ 1331 and 1338(a).  
11

12 4. This Court has personal jurisdiction over Defendant because it has  
13 maintained sufficient minimum contacts with California such that the exercise of  
14 personal jurisdiction over it would not offend traditional notions of fair play and  
15 substantial justice.

16 5. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a)  
17 because Defendant or its agents reside or may be found in this district. "The Ninth  
18 Circuit has interpreted Section 1400(a) to mean that venue is proper in any  
19 judicial district in which the defendant would be amenable to personal  
20 jurisdiction." Righthaven LLC v. Inform Techs., Inc., No. 2:11-CV-00053-KJD-  
21 LRL, 2011 U.S. Dist. LEXIS 119379, at \*8 (D. Nev. Oct. 14, 2011) (citing  
22 Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir.  
23  
24

2010)).

## **FACTS**

### **I. Plaintiff's Business**

6. From its offices in New York City and London, Plaintiff represents (all around the world) over 100 of some of the most creative and innovative contemporary photographers working today.

7. Plaintiff boasts a wide collection of portrait, lifestyle, beauty and fashion photography for editorial and commercial licensing. Some of Plaintiff's image collection and a list of the photographers it represents is available on its website (at <https://www.augustimage.com/>).

8. Plaintiff sets itself apart from others because it is knowledgeable about its exclusive images and strives to provide a high level of customer satisfaction. In order to make its rights managed collection available to its clients, Plaintiff has spent years to secure the relationships, information and team to efficiently acquire the releases as necessary.

### **II. The Work at Issue in this Lawsuit**

9. Kenneth Willardt is one of the many renowned photographers represented by Plaintiff.

10. Mr. Willardt, a Danish-born photographer, is known for his work in the beauty and fashion industries. Relocating to New York after honing his talents

1 in his home country, Mr. Willardt has partnered with publications such as *Vogue*  
2 *China*, *Italian Vanity Fair*, and *GQ*. In the world of advertisements his clients  
3 include L’Oréal, Maybelline, Christian Dior, and Neutrogena. Mr. Willardt’s work  
4 can be viewed on his professional website (at <http://kennethwillardt.com/>).

6 11. In 2009, Mr. Willardt took a professional photograph of American  
7 model Emily DiDonato titled “AU11264768” (the “Work”). A copy of the Work  
8 is exhibited below:



20 12. The Work was registered by Mr. Willardt with the Register of  
21 Copyrights on July 6, 2020 and was assigned Registration No. VA 2-212-174. A  
22 true and correct copy of the Certificate of Registration pertaining to the Work is  
23 attached hereto as **Exhibit “A.”**  
24

1           13. Mr. Willardt is the owner of the Work and has remained the owner at  
2 all times material hereto.

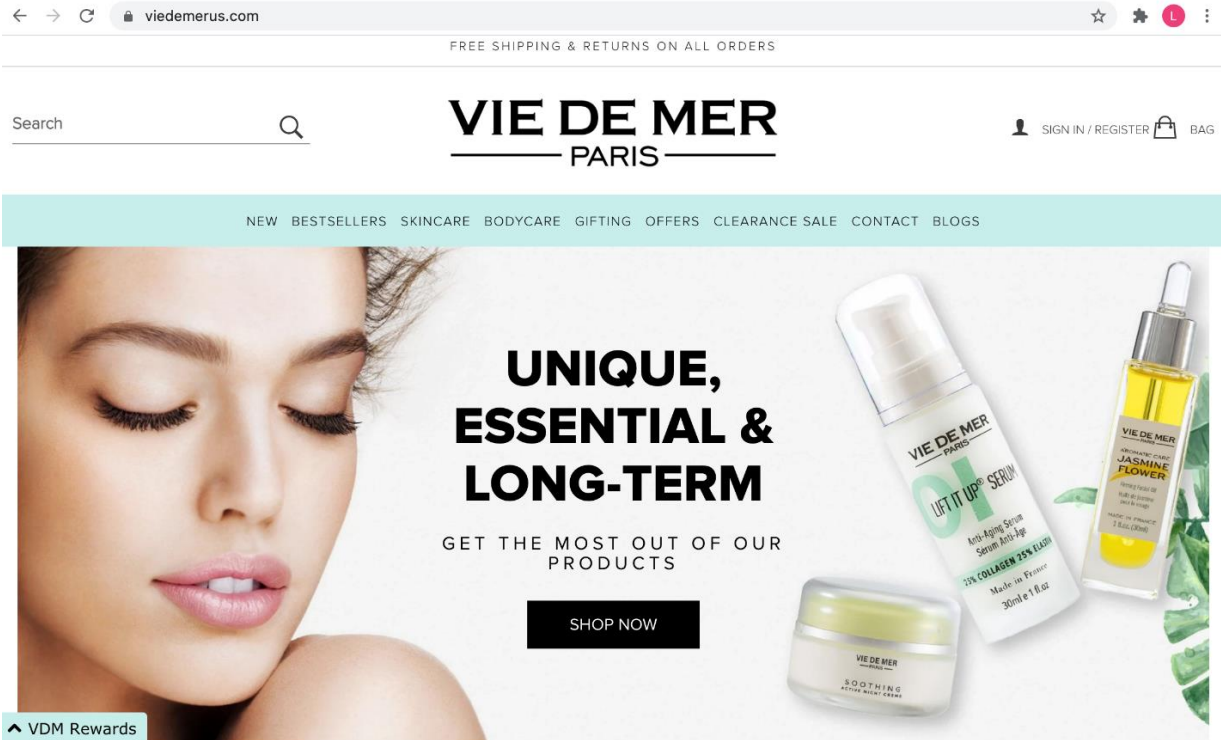
3           14. For all times relevant to this action, Plaintiff has been appointed as  
4 the exclusive administrator and publisher of all copyright rights in and to the Work.  
5 As such, Plaintiff is entitled to institute and maintain this action for copyright  
6 infringement. See 17 U.S.C. § 501(b).

7  
8 **II. Defendant's Unlawful Activities**

9           15. Defendant is a botanical-based, cold processed luxury skincare line.

10           16. Defendant advertises/markets its business primarily through its  
11 website (<https://viedemerus.com/>), social media (e.g.,  
12 <https://www.facebook.com/viedemerus/> and  
13 <https://www.instagram.com/viedemerus/>), and other forms of advertising.

14           17. On a date after Plaintiff's above-referenced copyright registration of  
15 the Work, Defendant published the Work on its website (at  
16 <https://viedemerus.com/>):  
17  
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18. A true and correct copy of screenshots of Defendant's website, displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

19. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its social media or for any other purpose.

20. Defendant utilized the Work for commercial use – namely, in connection with the marketing of Defendant's business.

21. Upon information and belief, Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

1           22. Through its ongoing diligent efforts to identify unauthorized use of its  
2 photographs, Plaintiff first discovered Defendant's unauthorized use/display of  
3 the Work in December 2020. Following Plaintiff's discovery, Plaintiff notified  
4 Defendant in writing of such unauthorized use. To date, Plaintiff has been unable  
5 to negotiate a reasonable license for the past infringement of its Work.  
6

7           23. All conditions precedent to this action have been performed or have  
8 been waived.

9                           **COUNT I – COPYRIGHT INFRINGEMENT**

10           24. Plaintiff re-alleges and incorporates paragraphs 1 through 23 as set  
11 forth above.  
12

13           25. The Work is an original work of authorship, embodying copyrightable  
14 subject matter, that is subject to the full protection of the United States copyright  
15 laws (17 U.S.C. § 101 *et seq.*).  
16

17           26. Mr. Willardt owns a valid copyright in the Work, having registered  
18 the Work with the Register of Copyrights.

19           27. Plaintiff has standing to bring this lawsuit and assert the claim(s)  
20 herein as it has sufficient rights, title, and interest to such copyright (as Plaintiff  
21 serves as the exclusive licensing agent with respect to the Work).  
22

23           28. As a result of Plaintiff's reproduction, distribution, and public display  
24 of the Work, Defendant had access to the Work prior to its own reproduction,

1 distribution, and public display of the Work on its website.

2 29. Defendant reproduced, distributed, and publicly displayed the Work  
3 without authorization from Plaintiff.

4 30. By its actions, Defendant infringed and violated Plaintiff's exclusive  
5 rights in violation of the Copyright Act, 17 U.S.C. § 501, by reproducing,  
6 distributing, and publicly displaying the Work for its own commercial purposes.

7 31. Defendant's infringement was willful as it acted with actual  
8 knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's  
9 copyright. Notably, Defendant itself utilizes a copyright disclaimer on its website  
10 ("© 2023 Vie De Mer Paris"), indicating that Defendant understands the  
11 importance of copyright protection and intellectual property rights and is actually  
12 representing that it owns each of the photographs published on its website. See,  
13 e.g., Bell v. ROI Prop. Grp. Mgmt., LLC, No. 1:18-cv-00043-TWP-DLP, 2018  
14 U.S. Dist. LEXIS 127717, at \*3 (S.D. Ind. July 31, 2018) ("[T]he willfulness of  
15 ROI's infringement is evidenced by the fact that at the bottom of the webpage on  
16 which the Indianapolis photograph was unlawfully published appeared the  
17 following: 'Copyright © 2017.' By placing a copyright mark at the bottom of its  
18 webpage that contained Mr. Bell's copyrighted Indianapolis Photograph, Mr. Bell  
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1 asserts ROI willfully infringed his copyright by claiming that it owned the  
2 copyright to everything on the webpage.”); John Perez Graphics & Design, LLC  
3 v. Green Tree Inv. Grp., Inc., Civil Action No. 3:12-cv-4194-M, 2013 U.S. Dist.  
4 LEXIS 61928, at \*12-13 (N.D. Tex. May 1, 2013) (“Once on Defendant’s  
5 website, Defendant asserted ownership of Plaintiff’s Registered Work by  
6 including a copyright notice at the bottom of the page. Based on these allegations,  
7 the Court finds Plaintiff has sufficiently pled a willful violation....”). Defendant  
8 clearly understands that professional photography such as the Work is generally  
9 paid for and cannot simply be copied from the internet.

13 32. Plaintiff has been damaged as a direct and proximate result of  
14 Defendant’s infringement.

15 33. Plaintiff is entitled to recover its actual damages resulting from  
16 Defendant’s unauthorized use of the Work and, at Plaintiff’s election (pursuant to  
17 17 U.S.C. § 504(b)), Plaintiff is entitled to recover damages based on a  
18 disgorgement of Defendant’s profits from infringement of the Work, which  
19 amounts shall be proven at trial.

21 34. Alternatively, and at Plaintiff’s election, Plaintiff is entitled to  
22 statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed  
23 proper by the Court.

1           35. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover its  
2 costs and attorneys' fees as a result of Defendant's conduct.

3           36. Defendant's conduct has caused, and any continued infringing  
4 conduct will continue to cause, irreparable injury to Plaintiff unless enjoined by  
5 the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502,  
6 Plaintiff is entitled to a permanent injunction prohibiting infringement of  
7 Plaintiff's exclusive rights under copyright law.  
8

9           **WHEREFORE**, Plaintiff demands judgment against Defendant as follows:

- 10           a. A declaration that Defendant has infringed Plaintiff's copyrights in the  
11 Work;  
12           b. A declaration that such infringement is willful;  
13           c. An award of actual damages and disgorgement of profits as the Court deems  
14 proper or, at Plaintiff's election, an award of statutory damages for willful  
15 infringement up to \$150,000.00 for each infringement of the Work;  
16           d. Awarding Plaintiff its costs and reasonable attorneys' fees pursuant to 17  
17 U.S.C. § 505;  
18           e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing  
19 amounts;  
20           f. Permanently enjoining Defendant, its employees, agents, officers, directors,  
21 attorneys, successors, affiliates, subsidiaries and assigns, and all those in  
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1 active concert and participation with Defendant, from directly or indirectly  
2 infringing Plaintiff's copyrights or continuing to display, transfer, advertise,  
3 reproduce, or otherwise market any works derived or copied from the Work  
4 or to participate or assist in any such activity; and  
5

6 g. For such other relief as the Court deems just and proper.

7 **Demand For Jury Trial**

8 Plaintiff demands a trial by jury on all issues so triable.

9 DATED: October 3, 2023

**COPYCAT LEGAL PLLC**

11  
12 By: /s/ Lauren M. Hausman  
13 Lauren M. Hausman, Esq.  
14 Attorney for Plaintiff  
15 August Image, LLC  
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